

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                    |
|--------------------|------------------------------------|
| KIM THOMAS,        | §                                  |
|                    | § No. 375, 2011                    |
| Defendant Below,   | §                                  |
| Appellant,         | §                                  |
|                    | §                                  |
| v.                 | § Court Below—Superior Court       |
|                    | § of the State of Delaware, in and |
| STATE OF DELAWARE, | § for New Castle County            |
|                    | § Cr. ID 0911006558                |
| Plaintiff Below,   | §                                  |
| Appellee.          | §                                  |

Submitted: April 6, 2012

Decided: June 11, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 11<sup>th</sup> day of June 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Kim Thomas, filed this appeal from a Superior Court order, dated July 8, 2011, sentencing him for a violation of probation (VOP) and entering a civil judgment against him in the amount of \$12,311.41.

(2) The record reflects that Thomas pled guilty on June 3, 2010 to one count of possession of drug paraphernalia. The Superior Court immediately sentenced him to one year at Level V incarceration to be suspended immediately for one year at Level II probation. The June 3, 2010 order imposed a monetary obligation consisting of \$480 in fees and penalties but did not order restitution. In

April 2011, a VOP report was filed and a capias was issued for Thomas' arrest. Thomas was charged with failure to report to his probation officer and failure to make any payments toward the \$480 in fees imposed by the Superior Court's sentencing order.

(3) A VOP hearing was held on July 8, 2011. The Superior Court found Thomas had violated his probation and sentenced him to one year at Level V incarceration (with credit for sixteen days served) to be suspended after serving 120 days in prison with no probation to follow. The VOP sentencing order also entered a civil judgment in the amount of \$12,311.41, of which \$10,006.80 was restitution. This appeal followed.

(4) In his opening brief, Thomas essentially contends that he was never previously ordered by the Superior Court to pay restitution and thus the civil judgment against him is unsupported by the record. He contends that he was never notified that the issue of restitution would be addressed at his VOP hearing and that he was unable to present any evidence on the issue.

(5) After careful review of the record, we find that this matter must be remanded to the Superior Court for further proceedings. An appellate court is completely dependent upon the record made at the trial level if it is to perform its function of error review. That record must include the reasons or rationale for the trial court's decision. In this case, there is no evidence that was presented on the

record to justify the Superior Court's civil judgment entered in this VOP proceeding. Accordingly, we are unable to review Thomas' claims on appeal.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's civil judgment of \$12,311.41 is hereby VACATED. This matter is REMANDED to the Superior Court to hold a restitution hearing upon proper notice to the appellant. The VOP sentence is AFFIRMED in all other respects. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice